

Mediation Directive 2008/52/EC

[Directive 2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008, on certain aspects of mediation in civil and commercial matters (the Mediation Directive) is designed to facilitate access to alternative dispute resolution mechanisms and promote the amicable settlement of disputes, while encouraging the use of mediation. The directive applies to cross-border disputes in civil, including family law, and commercial matters. It applies if at least one of the parties is domiciled in an EU Member State. Conversely, it does not apply to disputes concerning revenue, customs, administrative matters, liability of the State or omissions in the exercise of State authority. Neither does it apply to disputes where one or more parties is domiciled or resident in Denmark. The directive, together with [Directive 2013/11/EU](#) on alternative dispute resolution and [Regulation \(EU\) No 524/2013](#) on online dispute resolution, is one of the European legal acts on alternative dispute resolution mechanisms.

Mediation Directive 2008/52/EC

Commission proposal	22 October 2004 (COM(2004) 718 final)
Date of adoption of original legislation in plenary	23 April 2008 (P6_TA(2008)0166) (second reading)
Date of adoption of legislation by Council	28 February 2008 (CS/2007/15003) (first reading)
Deadlines for transposition of legislation	Member States were obliged to transpose the directive into their legal systems by 21 May 2011, with the exception of Article 10, for which the directive set the transposition deadline of 21 November 2010 (Article 12, Directive 2008/52/EC). ¹
Amendments	The directive has not been amended.

Mediation

Article 3 of the directive describes mediation as a structured process whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach agreement on the settlement of their dispute with the assistance of a mediator. Mediation can either be initiated by the parties to the dispute, suggested or ordered by a court, or prescribed by the law of a Member State. Agreements resulting from mediation should be generally enforceable. Mediation, as required by the text of the directive, should generally be confidential. Member States have an obligation to promote and encourage the availability to the general public of information on how to contact mediators or organisations providing mediation services.

European Commission report

The Commission's report on the application of the Mediation Directive ([COM\(2016\) 542 final](#)) noted that the directive had had a 'significant impact on the legislation of many Member States', while this impact varied 'according to the pre-existing level of national mediation systems'. Although the report concluded that there was no particular need to revise the directive, the directive's application could be further improved in some regards. For example, Member States needed to step up their efforts to promote and encourage the use of mediation through various mechanisms included in the directive, such as providing financial incentives or ensuring enforceability of mediation agreements. In this regard, the Commission also

¹ The directive was transposed within the given deadline by all Member States with the exception of Denmark, which has an opt-out in this field. Croatia transposed the directive by 1 July 2013, the date of its accession to the EU.

promised to do more to promote the take-up of mediation and to co-finance mediation-related projects, and pointed to the [European e-Justice Portal](#) pages on the Member States' mediation systems.

European Parliament position

In its [resolution of 12 September 2017 on the implementation of the Mediation Directive](#), Parliament deplored the fact that three Member States had chosen to transpose the directive with respect to cross-border cases only (point 2). It also pointed to the absence of a mediation culture in several Member States. Parliament called on Member States 'to step up their efforts to encourage the use of mediation in civil and commercial disputes' (point 11). It also called on the Commission to assess the need to develop European standards for the provision of mediation services (point 12). Furthermore, it called on the Commission 'to promote the use of mediation as a sound, affordable and effective way to solve conflicts' (point 14). In its [resolution of 13 September 2011 on the implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts](#), Parliament noted that mediation was more likely to produce a result that was mutually agreeable to the parties. This, according to Parliament, increased the acceptance of a mediation agreement and compliance therewith (point 17). Furthermore, Parliament considered that 'national authorities should be encouraged to develop programmes in order to promote adequate knowledge of alternative dispute resolution' (point 19). The Commission was encouraged to examine the areas in which States had chosen to extend the measures of the directive beyond its intended scope (point 15). Parliament has held several debates linked with the issue of mediation (for instance in [December 2012](#)). Several studies have also been published (e.g. J. Tymowski, [The Mediation Directive](#), EPRS, 2016).

Members' questions

Members have addressed questions to the European Commission, for written or oral answer, concerning the directive and transposition of its provisions. These questions have covered various aspects of the directive and related issues, such as criteria governing mediation costs (e.g. [E-002698-17](#) and [E-002702-17](#)), children and family issues (e.g. [O-000028/2016](#), [O-000027/2016](#), [E-008915/2012](#), [E-002139/2011](#) and [E-7663/2010](#)), mediation regarding insolvency matters (e.g. [P-010734-13](#)), the directive's objectives (e.g. [O-000169/2012](#)) and general matters relating to alternative dispute resolution mechanisms (e.g. [E-003934/2011](#), [E-003933/2011](#) and [E-003932/2011](#)).

Petitions

Several petitions submitted to the European Parliament have dealt with the implementation and application of the directive, as well as the concept of mediation. For instance, in [Petition 47/2017](#) the petitioner called on Parliament to support mediation as an alternative method for conflict resolution and as a legal tool for achieving social peace. [Petition 1072/2017](#) requested the introduction of a European mediator statute, covering the governing principles of mediation and highlighting extra-judicial dispute resolution. [Petition 1344/2013](#) argued that a proposed amendment to national law could violate the general principles introduced by the directive, while [Petition 2395/2013](#) claimed that restrictions to the implementation of the directive adopted by a national constitutional court were illegal.

Selection of relevant case law

The Court has in some cases dealt with the provisions of the directive when giving a preliminary ruling. For example, in case [C-492/11 Di Donna](#) the Court ruled that there was no need to give an answer to a national court's request because of the development of the dispute before the referring court from the point of view of the applicable law (i.e. the effect of a constitutional court decision removed the respective provisions from the legal system of the requesting court) (paragraph 27). In [case C-75/16 Menini and Rampanelli](#), the Court was, inter alia, asked to provide a preliminary ruling with regard to the directive. It reached the decision, however, that the directive was not applicable in the dispute. For that reason, it was not necessary to provide an answer to the national court's question (paragraph 35).

This document has been prepared for the interparliamentary committee meeting of 27 November 2018: Empowering parliaments and enforcing citizens' rights in the implementation and application of Union law.

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy. © European Union, 2018.